

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 8523

Petition of Next Generation Solar Farm, LLC,     )  
for a certificate of public good, pursuant to     )  
30 V.S.A. §248 authorizing the construction of a     )  
2.2 MW photovoltaic electric generation facility     )  
off Field Days Road in New Haven, Vermont     )

Order entered: 1/15/2016

**PROCEDURAL ORDER RE: DENIAL OF MOTION TO JOIN GREEN MOUNTAIN POWER**

**I. INTRODUCTION**

On December 21, 2015, the Town of New Haven (“New Haven”) filed a motion (the “Joinder Motion”) with the Vermont Public Service Board (the “Board”) requesting that Green Mountain Power Corporation (“GMP”) be joined as a party to this Docket pursuant to Vermont Rules of Civil Procedure 19(a) and 21.<sup>1</sup> In this Order, I deny the Joinder Motion and direct Next Generation Solar Farm, LLC (“NGSF” or the “Petitioner”) to have a witness available at the technical hearing scheduled for January 21-22, 2016, who is competent to respond to questions regarding the contents of GMP’s January 7, 2016, second revised supplementary review of the Fast Track Analysis (the “2<sup>nd</sup> FTA Supplement”).

**II. PROCEDURAL HISTORY**

On May 8, 2015, NSGF filed its petition including prefiled testimony and exhibits seeking the Board’s approval of a certificate of public good (“CPG”), pursuant to 30 V.S.A. §248 authorizing the construction of a 2.2 MW photovoltaic electric generation facility off Field Days Road in New Haven, Vermont (the proposed “Project”). Among the exhibits filed was a Fast

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1. On January 8, 2016, Ryan McCue joined in the Joinder Motion.

Track Analysis for the Project prepared by GMP on April 20, 2015, marked as exhibit NGSF NV-8.

On August 28, 2015, NGSF filed an August 25, 2015, revised supplementary review of GMP's Fast Track Analysis as Attachment DPS 1-9 of a response to a discovery request from the Vermont Department of Public Service.

On December 21, 2015, New Haven filed the Joinder Motion.

On December 24, 2015, I issued an Order directing the parties to file any responses to the Joinder Motion by January 8, 2016.

On January 8, 2016, the following items were filed with the Board: (1) Ryan McCue's motion to join the Joinder Motion; (2) comments by NGSF opposing the Joinder Motion ("NGSF Response"); and (3) GMP's comments on the Joinder Motion ("GMP Comments") attaching the 2<sup>nd</sup> FTA Supplement.<sup>2</sup>

No other comments were filed.

### **III. POSITIONS OF THE PARTIES**

#### **New Haven**

It is New Haven's position that GMP's Fast Track Analysis, supplementary review of the Fast Track Analysis prepared on August 25, 2015, and related materials "create a substantial issue regarding system reliability and stability, as well as a significant procedural issue regarding the failure to file a System Impact Study in the face of failure of at least two Fast Track Analysis criteria."<sup>3</sup> Therefore, New Haven argues that "testimony and evidence from GMP is necessary in order to make the determination whether or not this Board should waive the required Fast Track

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2. GMP is not a party to this proceeding. The GMP Comments state that the 2<sup>nd</sup> FTA Supplement was prepared in response to my December 24, 2015, Order seeking comments in order to "clarify why the project could be interconnected without adverse impact to system stability and reliability even though it did not pass certain fast track screening criteria." GMP Comments at 1. Further, GMP articulates an "engineering opinion that the interconnection of this generation facility, as set forth in the Supplemental Review as revised, will not result in an adverse impact to system stability and reliability." *Id.*

3. Joinder Motion at 1.

criteria, whether or not to waive the required Fast Track Analysis, and whether the Fast Track failures of this Project implicate system reliability and stability.”<sup>4</sup>

NGSF

NGSF opposes the Joinder Motion because “GMP is not a necessary party” and “joinder of GMP would unnecessarily delay the proceeding.”<sup>5</sup> NSGF argues that the Board has granted “numerous Certificates of Public Good” in other dockets where GMP was not joined despite the fact that those “projects have failed fast track analysis and the interconnecting utility did not perform a feasibility, system impact, or facilities study.”<sup>6</sup> NSGF, asserting that New Haven received the Fast Track Analysis during discovery in August 2015 and did not then find it necessary to join GMP as a party prior to filing its own testimony in October, also argues that the joinder of GMP would unnecessarily delay an already rescheduled technical hearing.<sup>7</sup>

**IV. LEGAL STANDARD**

V.R.C.P. 19(a) states:

A person who is subject to service of process shall be joined as a party in the action if (1) in the person’s absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person’s absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person’s claimed interest. If the person has not been so joined, the court shall order that the person be made a party.

In *Petition of SSE New Haven Solar II LLC*, the Board acted *sua sponte* to order the joinder of GMP as a necessary party to a solar net-metering application docket because “the

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4. *Id.* at 2.

5. NSGF Response at 1.

6. *Id.*

7. *Id.* at 4.

Board does not have sufficient basis to conclude that the Project will not adversely affect system stability and reliability.”<sup>8</sup>

Board Rule 5.500 establishes two possible procedures by which applications for interconnection can be evaluated: "applications eligible for fast track" or "applications not eligible for fast track." Applications are screened for eligibility using criteria known as the "Fast Track Screening Criteria." Complete applications that meet those criteria are eligible to proceed directly to an interconnection agreement (i.e., fast tracked). Applications that fail any of the screening criteria are not eligible for fast track and must proceed according to the procedures contained in Rule 5.107, which potentially include a Feasibility Study, a System Impact Study, and a Facilities Study.<sup>9</sup>

## **V. DISCUSSION**

New Haven requests that GMP be joined as a necessary party to this proceeding so that a GMP witness can be questioned about how GMP concluded that interconnection of the Project would not have an adverse impact on system stability and reliability even though the Project failed Fast Track Analysis.

The Petitioner provided GMP's Fast Track Analysis and first supplementary review to the parties during discovery in this proceeding. The 2<sup>nd</sup> FTA Supplement was filed with the Board directly by GMP but has not yet been subject to questions from the parties.

The existence of the 2<sup>nd</sup> FTA Supplement makes this case different from Docket CPG #NMP-5978, and I am not therefore persuaded that GMP's presence as a party is needed to receive the "testimony and evidence" sought by New Haven. Hence, it is my conclusion that GMP is not now a necessary party as contemplated by Rule 19(a). Therefore, the Joinder Motion is denied.

This ruling is, however, conditioned on the Petitioner offering the 2<sup>nd</sup> FTA Supplement into evidence subject to cross examination by the parties. Therefore, I am directing NGSF to have a witness available at the technical hearing competent both to introduce the 2<sup>nd</sup> FTA

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8. Docket CPG #NMP-5978, Order of 10/23/15, at 3.

9. Board Rules 5.500 and 5.107; and *see* Docket CPG #NMP-5978, Order of 10/23/15, at 2.

Supplement into evidence and to respond to questions from the Board and the parties regarding its contents at the technical hearing.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 15<sup>th</sup> day of January, 2016.

s/Michael E. Tousley, Esq.

Michael E. Tousley, Esq.

Hearing Officer

OFFICE OF THE CLERK

FILED: January 15, 2016

ATTEST: s/Judith C. Whitney  
Acting Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: [psb.clerk@vermont.gov](mailto:psb.clerk@vermont.gov))*